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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of)
Jerome A. Cohen) Examiner: Michael Safavi
For: APPARATUS FOR MAKING)
FOUNDATION WALLS HAVING) Group Art Unit: 3673
ANGLED OR ARCUATE CONTOURS) Confirmation No. 5471
Serial No.: 10/643,496)
Filed On: August 19, 2003) (Our Docket No. 6842-0002-1)

Middletown, Connecticut, October 26, 2006

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P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

This is an appeal to the Board of Appeals from an Office Action mailed February 28, 2006 marked "final" and the subsequent Advisory Action mailed June 15, 2006, in which the Examiner finally rejected claims 1 and 8 of the above-identified application. This Brief is submitted further to the filing of the Notice of Appeal mailed on June 26, 2006, for which a two-month extension of time is requested. A check in the amount of \$475.00 covering the fee for filing an Appeal Brief and the two-month extension of time is enclosed.

Appellant respectfully requests that the Appeal Board consider the Arguments presented herein.

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One copy of this brief is being filed.

I. REAL PARTY IN INTEREST

The real party in interest in this Appeal is Jerome A. Cohen.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interference proceedings known to Appellant, Appellant's legal representatives, or assignees that would directly affect or be directly affected by or have a bearing on the decision of the Board of Appeals and Interferences in this Appeal.

III. STATUS OF CLAIMS

Claims 1 and 8 are pending in the above-referenced patent application and have been finally rejected by the Examiner under 35 U.S.C. §103. Claims 2-7 and 9-10 have been cancelled. Claims 1 and 8 are appealed herein.

IV. STATUS OF AMENDMENTS

Proposed amendments to claim 1 were submitted on May 26, 2006, in response to the final Office Action. In the Advisory Action mailed June 15, 2006, the Examiner indicated that the proposed amendments would not be entered because they raise new issues that would require further consideration and search and they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The present invention is directed to a plurality of foundation forms 10 rotatably connected to one another via the apparatus of the present invention, generally designated by the reference number 12. (Page 1, paragraph 14 and FIG. 1). The apparatus 12 includes first and second connecting members, 14 and 16 respectively, each attached, to one of the foundation forms 10. Each of the first and second connecting members, 14 and 16

respectively, define outwardly projecting joining portions 18. Each joining portion 18 defines a shaped passage 20 extending there through. (Page 1, paragraph 14 and FIG. 3). When each of the connecting members 14, 16 is attached to a foundation form 10 and the forms are operably positioned adjacent to one another, the joining portions 18 interlock. Once the joining portions 18 are interlocked, the shaped passages 20 defined by each are substantially coaxial. (Page 1, paragraph 14 and FIG. 2).

The apparatus of the present invention includes an elongated coupling member 22 defining an exterior shape complimentary to a shape defined by the shaped passages 20. The elongated coupling member 22 is slidably received in the shaped passages 20 and is shown in the illustrated embodiment as a pipe. (Pages 1-2, paragraph 15 and FIG. 3). In order to allow for the proper positioning of the first and second connecting members, 14 and 16 respectively, spacers 24 are positioned between the foundation forms. The spacers 24 can be "U" shaped or they can be substantially flat. (Pages 1-2, paragraph 15 and FIGS. 4 and 4A).

The first and second connecting members, 14 and 16 respectively, each define a channel 25 adapted to receive an end of a foundation form 10, and apertures 26, shown in the illustrated embodiment as "T" shaped slots for receiving a fastener 28 to couple the foundation forms 10 to the connecting members. The fasteners 28 can be preinstalled and the connecting members 14 and 16 slid over them via the slots 26, or they can be installed once the connecting members are positioned. (Page 2, paragraph 16 and FIGS. 2 and 3).

A copy of the claims, as they currently stand, is presented in the Claims Appendix (Section VIII).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A) The Examiner has rejected claims 1 and 8 under 35 U.S.C. §103(a) as allegedly being unpatentable over United States Patent No. 3,153,807 to Nyman (hereinafter "Nyman") in view of United States Design Patent No. D493,351 to Wegman (hereinafter "Wegman").

B) In the Office Action, the Examiner rejects claims 1 and 8 under 35 U.S.C. §103(a) as allegedly being unpatentable over the United States Patent No. 3,825,220 to Schmaltz (hereinafter “Schmaltz”) in view of Wegman.

VII. ARGUMENT

Claims 1 and 8 are patentable within the meaning of 35 U.S.C. §103(a).

Claim 1 is an independent claim. Claim 8 depends from claim 1.

Claim 1 recites:

“ An apparatus for making foundation walls having angled or arcuate contours comprising: first and second connecting members, each defining at least one joining portion, each of said first and second connecting members defining a channel for slidably receiving an end of a foundation form being couplable to an end of a foundation form so that when said forms are operably positioned adjacent to one another said joining portions defined by each of said connecting members interlock with one another; each of said first and second connecting members defining a plurality of T-shaped slots to allow said first and second connecting members to be slidably attached to said foundation forms via pre-installed fasteners projecting outwardly from said foundation forms, each of said T-shaped slots extending completely through at least one surface of said first and second connecting members; each joining portion defines a shaped passage extending there through, said shaped passage being substantially coaxial with one another when said first and second connecting members are operably positioned; said shaped passage being positioned substantially between said foundation forms; an elongated coupling member defining an exterior shape complimentary to a shape defined by said shaped passages is slidably received in said shaped passages thereby rotatably and releasably joining said first and second connecting members and thereby said foundation forms together.”

Claim 8 recites:

“An apparatus as defined by claim 1, wherein each of said first and second connecting members is integral with a respective foundation form.”

A) The Examiner’s rejection of claims 1 and 8 under 35 U.S.C. §103(a) as allegedly being unpatentable over Nyman in view of Wegman is improper.

Regarding claim 1, the Examiner alleges that Nyman discloses all the limitations of claim 1 except for a T-shaped slot to allow attachment of a form board to the surface of the connecting members via a fastener installed in the form board. The Appellant disagrees with the Examiner’s characterization of Nyman.

However, without addressing the patentability of claim 1 as previously presented in view of Nyman and merely to streamline prosecution of the present application, clarifying amendments have been made to claim 1 in the Amendment dated May 26, 2006. Support for the proposed amendments to claim 1 may be found in the original disclosure at least at paragraphs 0006 and 0014 and FIG. 3. Thus, no new matter is presented. Nyman is merely seen to disclose a hinge intended for collapsible pallet racks of the type used when small parcels or unpacked articles are to be transported on loading pallets. Unlike Appellant's claim 1, Nyman is not seen to disclose, teach or suggest all of the limitations of claim 1.

As an initial matter, the invention disclosed in Nyman is directed to a hinge intended for collapsible pallet racks of the type used when small parcels or unpacked articles are to be transported on loading pallets. Such a hinge would not be applicable to use with foundation forms. These forms are typically massive and must withstand the rigors of harsh treatment and harsh weather. They also must hold up against the force of tons of concrete poured between the forms. Accordingly, a person skilled in the installation of foundations would not look to hinges used to make collapsible pallet racks for guidance. In fact, such a reference would in all likelihood be immediately dismissed as being too flimsy and ill-suited to the application of forming a concrete foundation.

Unlike the invention recited in claim 1 of the instant patent application, Nyman does not disclose, inter alia, the shaped passage being positioned substantially between the foundation forms. Instead, Nyman discloses socket portions 5 holding a pin 6 to form an offset hinge positioned outboard of the sidewalls 14. Moreover, as the Examiner admits, Nyman is not seen to disclose a plurality of T-shaped slots to allow said first and second connecting members to be slidably attached to said foundation forms via pre-installed fasteners projecting outwardly from the foundation forms. Instead, Nyman teaches away from slidably attaching the connecting members to the foundation forms, by disclosing rivets to connect the side walls 14 to the hinge. A rivet connotes a permanent, rather than a slidable connection as recited in claim 1. The Appellant therefore respectfully submits that Nyman fails to disclose, teach or suggest the limitations of claim 1.

In the Office Action, the Examiner alleges that FIGS. 1 and 6 of Wegman teach utilization of a T-shaped slot within a side surface of the connecting member to allow for

maneuverable attachment of the connecting member to a board or panel. The Appellant disagrees with the Examiner's characterization of Wegman.

Contrary to the Examiner's characterization, it is respectfully submitted that Wegman is merely seen to disclose the ornamental design for a cabinet hinge. The invention disclosed in Wegman is directed to a cabinet hinge. Such a hinge would not be applicable to use with foundation forms. As mentioned above, these forms are typically massive and must withstand the rigors of harsh treatment and harsh weather. They also must hold up against the force of tons of concrete poured between the forms. Accordingly, a person skilled in the installation of foundations would not look to cabinet hinges for guidance. In fact, such a reference would in all likelihood be immediately dismissed as being too flimsy and ill-suited to the application of forming a concrete foundation.

In addition, unlike claim 1 of the present application, Wegman does not disclose, teach or suggest, *inter alia*, each of said first and second connecting members defining a plurality of T-shaped slots to allow said first and second connecting members to be slidably attached to the foundation forms via pre-installed fasteners projecting outwardly from said foundation forms. Instead, Wegman shows one connecting member with no T-shaped slot whatsoever, rather than disclosing first and second connecting members defining a plurality of T-shaped slots, as recited in claim 1. Even if assuming, *arguendo*, that Wegman teaches a T-shaped slot, Wegman does not teach a plurality of T-Shaped slots, as recited in claim 1. Furthermore, Wegman discloses a plurality of holes with screws shown in phantom, which suggest that holes are preferred over T-shaped slots for securing the hinge to the cabinet. Use of holes precludes use of pre-installed fasteners as recited in claim 1. Use of a plurality of holes as disclosed in Wegman, therefore teaches away from use of a plurality of T-shaped slots to allow said first and second connecting members to be slidably attached to said foundation forms via pre-installed fasteners projecting outwardly from said foundation forms, as recited in claim 1. The Appellant therefore respectfully submits that Wegman fails to disclose, teach or suggest the limitations of claim 1.

Assuming, *arguendo*, that the proposed combination of the Nyman and Wegman references was proper, the invention recited in claim 1 of the present invention could still not be arrived at. For example, Nyman is not seen to disclose, teach or suggest, *inter alia*, each of said first and second connecting members defining a plurality of T-shaped slots to allow said

first and second connecting members to be slidably attached to said foundation forms via pre-installed fasteners projecting outwardly from said foundation forms. Furthermore, Wegman does not disclose, teach or suggest, inter alia, each of said first and second connecting members defining a plurality of T-shaped slots to allow said first and second connecting members to be slidably attached to said foundation forms via pre-installed fasteners projecting outwardly from said foundation forms. Neither Nyman nor Wegman individually or in combination, teaches all the recitations of claim 1. Consequently, because not all of the claim recitations are taught by the cited references, Appellant's claim 1 is necessarily non-obvious. For at least these reasons claim 1 is allowable and Appellant respectfully requests that the Board overturn the rejection of claim 1.

Claim 8 depends directly from claim 1. Because claim 1 is asserted to be non-obvious for the reasons presented above, and because Wegman does not cure the deficiencies of Nyman, dependant claim 8 is necessarily non-obvious. For at least these reasons claim 8 is allowable and Appellant respectfully requests that the Board overturn the rejection of claim 8.

B) The Examiner's rejection of claims 1 and 8 under 35 U.S.C. §103(a) as allegedly being unpatentable over Schmaltz in view of Wegman is improper.

Regarding claim 1, the Examiner alleges that Schmaltz discloses all the limitations of claim 1 except for a T-shaped slot to allow attachment of a form board to the surface of the connecting members via a fastener installed in the form board.

The Schmaltz reference is merely seen to disclose a removable form for moulding concrete having mortice and tenon type joints permitting adjacent forms to be arranged in a selected relation, with locking bars to secure the joints having a cam lock to retain the locking bar in place. The joints provide a substantially impermeable pouring face, and the locking bar carries a protective loose piece to seal the cam lock against pouring splash. Unlike Appellant's claim 1, Schmaltz is not seen to disclose, teach or suggest all of the limitations of claim 1, as presented above. Unlike the invention recited in claim 1 of the instant patent application, the Schmaltz reference does not disclose, inter alia, an elongated coupling member defining an exterior shape complimentary to a shape defined by said shaped passages is slidably received in said shaped passages thereby rotatably and releasably joining said first and second connecting. Instead the Schmaltz reference at column 2 lines 39-43, discloses:

“A centrally located recess 15 receives a locking bar 25 in sliding locking relation, to secure the two halves 12, 14 of the joint in locked relation, both to preclude transverse withdrawal of the tenon 22 from the mortice 24 and to prevent selective rotation of the halves.”

The Schmaltz reference further discloses the inability of the two halves 12, 14 to rotate at column 2 lines 46-49:

“When assembled as right angled configurations similar to locations a Z¹ of FIG.1, the abutting surfaces are changed, but the assured non-rotational relationship is similarly preserved.”

Furthermore, as the Examiner admits, the Schmaltz reference fails to disclose T-shaped slots to allow said first and second connecting members to be slidably attached to said foundation forms via pre-installed fasteners projecting outwardly from said foundation forms. The Appellant therefore respectfully submits that the Schmaltz reference fails to disclose, teach or suggest the limitations of claim 1

The deficiencies of the Wegman reference are discussed above.

Assuming, arguendo, that the proposed combination of the Schmaltz and Wegman references was proper, the invention recited in claim 1 of the present invention could still not be arrived at. For example the Schmaltz reference is not seen to disclose, teach or suggest, inter alia, an elongated coupling member defining an exterior shape complimentary to a shape defined by said shaped passages is slidably received in said shaped passages thereby rotatably and releasably joining said first and second connecting. As discussed above, the Wegman reference does not disclose, teach or suggest, inter alia, each of said first and second connecting members defining a plurality of T-shaped slots to allow said first and second connecting members to be slidably attached to said foundation forms via pre-installed fasteners projecting outwardly from said foundation forms. Neither the Schmaltz nor the Wegman reference individually or in combination, teaches all the recitations of claim 1. Consequently, because not all of the claim recitations are taught by the cited references, Appellant's claim 1 is necessarily non-obvious. For at least these reasons claim 1 is allowable and Appellant respectfully requests that the Board overturn the rejection of claim 1.

Claim 8 depends directly from claim 1. Because claim 1 is asserted to be non-obvious for the reasons presented above, and because the Wegman reference does not cure the

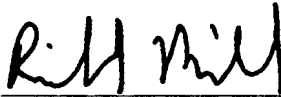
deficiencies of the Schmaltz reference, dependant claim 8 is necessarily non-obvious. For at least these reasons claim 8 is allowable and Appellant respectfully requests that the Board overturn the rejection of claim 8.

C) Conclusion

In summary, as argued above, not all of the claim recitations are taught by Nyman, Wegman, and Schmaltz. Therefore, claims 1 and 8 are non-obvious over the cited prior art. Accordingly, the Appellant respectfully requests that the Examiner's rejections be overturned and the present application be allowed to issue as a patent.

Appellant has enclosed a check in the amount of \$475.00 covering the applicable fees for filing the present appeal brief. No additional fees are believed to be due with the present submission. However, if any deficiencies exist, they may be charged to Deposit Account No. 503342 maintained by Appellant's attorneys.

Respectfully submitted,

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VIII. CLAIMS APPENDIX

1. (Currently Amended) An apparatus for making foundation walls having angled or arcuate contours comprising:

first and second connecting members, each defining at least one joining portion, each of said first and second connecting members defining a channel for slidably receiving an end of a foundation form being couplable to an end of a foundation form so that when said forms are operably positioned adjacent to one another said joining portions defined by each of said connecting members interlock with one another;

each of said first and second connecting members defining a plurality of T-shaped slots to allow said first and second connecting members to be slidably attached to said foundation forms via pre-installed fasteners projecting outwardly from said foundation forms, each of said T-shaped slots extending completely through at least one surface of said first and second connecting members;

each joining portion defines a shaped passage extending there through, said shaped passage being substantially coaxial with one another when said first and second connecting members are operably positioned; said shaped passage being positioned substantially between said foundation forms;

an elongated coupling member defining an exterior shape complimentary to a shape defined by said shaped passages is slidably received in said shaped passages thereby rotatably and releasably joining said first and second connecting members and thereby said foundation forms together.

8. (Original) An apparatus as defined by claim 1, wherein each of said first and second connecting members is integral with a respective foundation form.

IX. EVIDENCE APPENDIX

No evidence is submitted with this Appeal Brief.

X. RELATED PROCEEDINGS APPENDIX

No related proceedings are known to Appellant, Appellant's legal representatives, or assignees.